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Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

RUTH ROSENBERG,  
Individually and on behalf of a class,  
  
Plaintiff,

v.

CLUB MACANUDO, INC.  
  
Defendant.

Case No. 08-CV-00992 (HB)

ANSWER

Defendant CLUB MACANUDO, INC. (“Club Macanudo” or the “Defendant”), by and through its undersigned counsel, hereby answers the Complaint of RUTH ROSENBERG (“Rosenberg” or the “Plaintiff”), as follows:

**ANSWER**

1. The allegations contained in Paragraph 1 call for a legal conclusion, and therefore no response is required. To the extent a response is required, Club Macanudo is without sufficient knowledge or information to form a belief as to the truth or accuracy of the allegations in Paragraph 1.

2. The allegations contained in Paragraph 2 call for a legal conclusion, and therefore no response is required. To the extent a response is required, Club Macanudo refers to

the Fair and Accurate Credit Transactions Act (“FACTA” or the “Act”) and the contents thereof.

3. The allegations contained in Paragraph 3 call for a legal conclusion, and therefore no response is required.

4. The allegations contained in Paragraph 4 call for a legal conclusion, and therefore no response is required. To the extent a response is required, Club Macanudo states that it is without sufficient knowledge or information to form a belief as to the truth or accuracy of the allegations in Paragraph 4.

5. Club Macanudo is without sufficient knowledge or information to form a belief as to the truth or accuracy of the allegations in Paragraph 5.

6. Club Macanudo is without sufficient knowledge or information to form a belief as to the truth or accuracy of the allegations in Paragraph 6.

7. Club Macanudo is without sufficient knowledge or information to form a belief as to the truth or accuracy of the allegations in Paragraph 7.

8. The allegations contained in Paragraph 8 call for a legal conclusion, and therefore no response is required.

9. The allegations contained in Paragraph 9 call for a legal conclusion, and therefore no response is required.

10. Club Macanudo denies the allegations contained in Paragraph 10.

11. Club Macanudo is without knowledge or information as to the plaintiff’s reasons for bringing this lawsuit.

#### **JURISDICTION AND VENUE**

12. The allegations contained in Paragraph 12 call for a legal conclusion, and therefore no response is required.

13. The allegations contained in Paragraph 13 call for a legal conclusion, and therefore no response is required.

#### **PARTIES**

14. Club Macanudo is without knowledge or information sufficient to form a

belief as to the truth or accuracy of the allegations contained in Paragraph 14.

15. Club Macanudo admits that it is a New York corporation with its principal place of business at 26 East 63rd Street, New York, NY 10021.

16. The allegations contained in Paragraph 16 call for a legal conclusion, and therefore no response is required.

### **FACTS**

17. Club Macanudo is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 17. Club Macanudo admits that Club Macanudo, Inc. operates a cigar bar and restaurant called Club Macanudo at 26 East 63<sup>rd</sup> Street, New York, NY.

18. Club Macanudo is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 18.

### **CLASS ALLEGATIONS**

19. The allegations contained in Paragraph 19 call for a legal conclusion, and therefore no response is required. Club Macanudo denies that this action is properly maintainable as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3).

20. The allegations contained Paragraph 20 call for a legal conclusion, and therefore no response is required. Club Macanudo denies that the plaintiff class, as defined in Paragraph 20, is properly maintainable as a federal class action.

21. Club Macanudo denies the allegations contained in Paragraph 21, except to the extent that such allegations call for a legal conclusion, and therefore do not require a response.

22. Club Macanudo admits the allegations contained in Paragraph 22.

23. Club Macanudo denies the allegations contained in Paragraph 23, except to the extent that such allegations call for a legal conclusion, and therefore do not require a response.

24. Club Macanudo denies the allegations contained in Paragraph 24, except

to the extent that such allegations call for a legal conclusion, and therefore do not require a response.

25. Club Macanudo denies the allegations contained in Paragraph 25, except to the extent that such allegations call for a legal conclusion, and therefore do not require a response.

26. Club Macanudo denies the allegations contained in Paragraph 26, except to the extent that such allegations call for a legal conclusion, and therefore do not require a response.

### **VIOLATION ALLEGED**

27. The allegations contained in Paragraph 27 call for a legal conclusion, and therefore no response is required.

28. The allegations contained in Paragraph 28 call for a legal conclusion, and therefore no response is required.

29. The allegations contained in Paragraph 29 call for a legal conclusion, and therefore no response is required.

30. Club Macanudo admits that it accepts credit cards and/or debit cards in the course of transacting business and uses machines that electronically print receipts for credit card and/or debit card transactions. Club Macanudo otherwise denies the allegations contained in Paragraph 30.

31. Club Macanudo denies the allegations contained in Paragraph 31, except to the extent that such allegations call for a legal conclusion, and therefore do not require a response.

32. The allegations contained in Paragraph 32 call for a legal conclusion, and therefore no response is required.

33. Club Macanudo denies the allegations contained in Paragraph 33.

34. The allegations contained in Paragraph 34 call for a legal conclusion, and therefore no response is required. To the extent a response is required, Club Macanudo is

without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 34 and on that basis denies the allegations.

35. Club Macanudo is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 35.

36. Club Macanudo is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 36.

37. Club Macanudo is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 37.

38. Club Macanudo is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 38. The allegations contained in Paragraph 38 also call for a legal conclusion to which no response is required.

39. The allegations contained in Paragraph 39 call for a legal conclusion, and therefore no response is required. To the extent a response is required, Club Macanudo admits that it currently accepts Master Card, Visa, American Express and Diners Club credit and/or debit cards.

40. Club Macanudo is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 40.

41. Club Macanudo is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraph 41.

42. Club Macanudo denies the allegations contained in Paragraph 42, except to the extent that such allegations call for a legal conclusion, and therefore do not require a response.

43. The allegations contained in Paragraph 43 call for a legal conclusion, and therefore no response is required. To the extent a response is required, Club Macanudo refers to 15 U.S.C. § 1681n and the contents thereof.

44. The allegations contained in Paragraph 44 call for a legal conclusion, and therefore no response is required. To the extent a response is required, Club Macanudo refers to

15 U.S.C. § 1681p and the contents thereof.

**FIRST AFFIRMATIVE DEFENSE**

The statutory damages that Plaintiff seeks would be disproportionate and excessive to the harm alleged or suffered and would violate Club Macanudo's rights under the due process clauses of the United States and applicable state Constitutions.

**SECOND AFFIRMATIVE DEFENSE**

The claim for punitive damages is barred because any award of punitive damages in this case would violate Club Macanudo's constitutional rights under provisions of the United States Constitution and applicable state Constitutions. Additionally, any claim for punitive damages is barred because the alleged acts or omissions of Club Macanudo fail to rise to the level required to sustain an award of punitive damages, they do not evidence a malicious, reckless, or fraudulent intent to deny any protected rights, and they are not so wanton or willful as to support an award of punitive damages.

**THIRD AFFIRMATIVE DEFENSE**

Club Macanudo did not act "willfully" as required by 15 U.S.C. § 1681n(a), as a matter of law, because ambiguity in the statutory language renders it incapable of willful violation.

**FOURTH AFFIRMATIVE DEFENSE**

The Complaint and the purported cause of action alleged therein, is barred, in whole or in part, because Plaintiff and any purported class members have not suffered any injury, nor do they allege that they have suffered any injury by reason of any act or omission alleged in the Complaint to have been committed by Club Macanudo.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs and their claims fail to meet the necessary prerequisites for the maintenance of a class action.

**DEFENSES RESERVED**

Club Macanudo hereby gives notice that it intends to rely on other defenses that may become available or apparent during this litigation, including all affirmative defenses contained herein.

WHEREFORE, Club Macanudo demands judgment dismissing the Complaint in its entirety, together with the costs, disbursements and expenses of this action including attorneys' fees, as well as such other relief as to this Court may deem just and proper.

**JURY DEMAND**

Defendant, Club Macanudo, Inc., demands a trial by jury on all claims and causes of action to which it is entitled to a jury trial.

Dated: April 1, 2008

Respectfully submitted,

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